

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CLAYTON E. BUTSCH,	)	
	)	
Petitioner,	)	CASE NO. C12-0064-JLR-MAT
	)	
v.	)	
	)	ORDER ADDRESSING
RON FRAKER,	)	PETITIONER'S PENDING MOTIONS
	)	AND DIRECTING RESPONDENT TO
Respondent.	)	SUPPLEMENT THE RECORD
_____	)	

This is a federal habeas action brought under 28 U.S.C. § 2254. This matter comes before the Court at the present time on petitioner's motion for an order directing respondent to submit five relevant state court records, petitioner's motion to dismiss the "failure to object" sub-claim asserted in his eleventh ground for relief, and petitioner's motion for an order directing respondent to submit Exhibit 26. The Court, having reviewed petitioner's motions, all briefing thus far submitted by the parties, and the portions of the state court record thus far submitted by respondent, does hereby ORDER as follows:

(1) Petitioner's motion for an order directing respondent to submit five relevant state court records (Dkt. No. 23) is STRICKEN. Petitioner identifies in his motion five

01 documents from his state court direct appeal and collateral attack which are relevant to this  
02 federal habeas proceeding but which were not submitted by respondent in conjunction with his  
03 answer to the petition. Respondent, in his response to petitioner's motion, indicates that he has  
04 now supplemented the record with four of the five documents identified by petitioner.  
05 Respondent notes that the remaining document is already a part of the record. A review of the  
06 record confirms that the five documents identified by petitioner in his motion are now a part of  
07 the record. Petitioner's motion is therefore moot.

08 (2) Petitioner's motion to dismiss the "failure to object" sub-claim asserted in his  
09 eleventh ground for relief (Dkt. No. 24) is GRANTED. Petitioner concedes, as argued by  
10 respondent in his answer to the petition, that this sub-claim has not been properly exhausted.

11 (3) Petitioner's motion for an order directing respondent to submit Exhibit 26 (Dkt.  
12 No. 31) is GRANTED. Petitioner requests in the instant motion that respondent's counsel be  
13 ordered to submit to the Court, and to serve on petitioner, a copy of Exhibit 26 which petitioner  
14 asserts was missing from the materials provided by respondent in support of his answer to the  
15 petition. Respondent, in his response to petitioner's motion, maintains that the exhibit was  
16 previously provided to petitioner and to the Court. Respondent indicates, however, that he  
17 nonetheless sent an additional copy of the exhibit to petitioner as a courtesy. Respondent  
18 further indicates that he did not send a duplicative copy of the exhibit to the Court because he  
19 believed it was unnecessary to do so.

20 In fact, a review of respondent's exhibits reveals that Exhibit 26 is also missing from the  
21 Court's copy of the state court record. Thus, respondent is directed to provide the Court with a  
22 copy of that exhibit not later than *November 16, 2012*.

01 (4) Finally, a review of the state court record thus far submitted by respondent  
02 reveals that respondent has not provided a copy of the trial transcript for the Court's review.  
03 The Court deems it necessary to obtain a copy of the trial transcript before proceeding to  
04 disposition of the petition. Accordingly, respondent is directed to supplement the record with  
05 a copy of the complete trial transcript not later than ***November 16, 2012***.

06 (5) Petitioner's federal habeas petition (Dkt. No. 8) is RE-NOTED on the Court's  
07 calendar for consideration on ***November 16, 2012***.

08 (6) The Clerk is directed to send copies of this Order to petitioner, to counsel for  
09 respondent, and to the Honorable James L. Robart.

10 DATED this 30th day of October, 2012.

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13 Mary Alice Theiler  
14 United States Magistrate Judge  
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